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OUTLINE OF MATRIMONIAL PROPERTY LAWS
IN CANADA



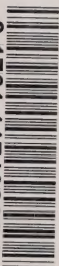
**Canadian Advisory Council
on the Status of Women**

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**Conseil consultatif canadien
de la situation de la femme**

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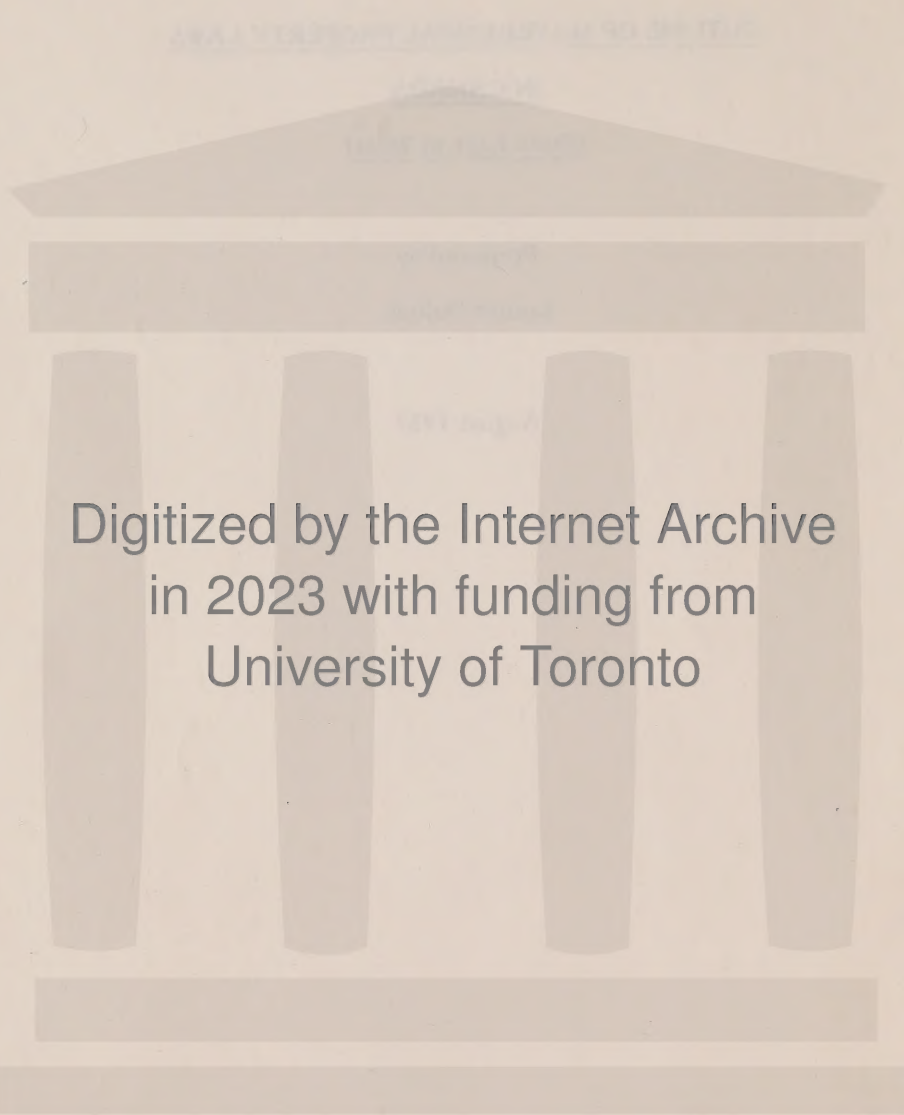
IN CANADA

(From East to West)

Prepared by

Louise Dulude

August 1982



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In 1970, when the Royal Commission on the Status of Women in Canada issued its report, it noted that Quebec was the only province whose matrimonial property laws treated women equally and recognized the value of the work they do in the home. While pointing out that even the Quebec system was not perfect, as it only provided for equal sharing of the spouses' assets at the end of their marriage, the Commission found it to be the best "practicable" system and recommended the implementation of similar laws throughout the country.

Since then, spurred by the infamous 1974 Murdoch case (in which the Supreme Court of Canada held that an Alberta ranch wife who for twenty-five years worked at "haying, raking, swathing, moving, driving trucks and tractors and teams, quietening horses, taking cattle back and forth to the reserve, dehorning, vaccinating, branding, anything that was to be done" had only acted like "any ranch wife" and was therefore not entitled to any of the assets the couple had accumulated under the husband's name during their marriage), every single province and territory of Canada has enacted new legislation which is fairer to women. The last one to do so was New Brunswick, whose Marital Property Act came into force on January 1, 1981.

Looking over these new laws, we find that they have both positive and negative aspects.

On the positive side, we are very happy to see that every Canadian jurisdiction has now corrected the injustice which led to the Murdoch decision. In addition, all except for the Northwest Territories now provide for the equal sharing of at least some of the spouses' assets upon their separation or divorce.

On the negative side, however, there are still many important sectors to be reformed. The most critical are:

- Many jurisdictions (Ontario, British Columbia, Alberta, Prince Edward Island and the Yukon) only provide for sharing of the assets of the spouses when the marriage ends in separation or divorce. As a result, widows may end up with a smaller share of the family assets than their divorced or separated counterparts.
- Only Manitoba and Saskatchewan (and possibly Alberta) provide for the equal sharing of the spouses' most important assets at the end of the marriage.

Quebec does not include rights to a future pension* in its shareable property, while most other provinces exclude both pension rights and business or savings property of all kinds.

- The laws of all the provinces and territories except Quebec give too much weight to judicial discretion. As British jurist Olive Stone wrote, judges who are given very broad powers tend to revert to the discredited "one-third rule", which comes from the old Ecclesiastical Courts' presumption that a woman was worth half as much as a man. This is already becoming evident in many Canadian judgments.

The present document is the third version of a paper which the Canadian Advisory Council on the Status of Women first issued in 1978. (It was originally prepared by Louise Dulude, was updated by Ruth Browne in 1979, and has now been updated again and substantially rewritten by Louise Dulude.) It is intended to provide a general overview of the laws of each province and territory, and any person seeking specific information on particular points is advised to consult more detailed legal sources.

As the above remarks on the current laws indicate, women's work in the area of matrimonial property is far from finished. A great deal of sustained political pressure is still needed to bring about laws making women equal partners within marriage everywhere in Canada.

* The pension credits or rights referred to in this paper are those acquired through employer-sponsored pension plans. Credits earned under the Canada Pension Plan (or the Quebec Pension Plan) are held individually by each spouse during the marriage, but will be divided between them after a divorce if either of them applies for splitting within three years of the final decree dissolving their union.

NEWFOUNDLAND

The standard matrimonial regime of Newfoundland, which was established by its Matrimonial Property Act of 1980, is a regime of deferred sharing with judicial discretion. This applies to the spouses who have not opted out of it by marriage contract, and it works as follows:

- **During the Marriage:** The general rule is that the spouses are separate as to property, so that a wife has no rights at all over the property and money acquired and owned by her husband.

This rule of separation is carried so far that even if a man buys property in his wife's name or transfers property to her, he is still presumed to be its owner unless a clear proof shows that it was meant to be a gift.

There are two exceptions to this rule of separation:

- 1) the matrimonial home is automatically owned by both spouses jointly, even if only one of them bought it, inherited it or otherwise acquired it;
- 2) the fact that property or money is put in the joint names of the spouses is proof that they are intended to own them in equal shares.

- **Upon Separation or Divorce:** In addition to whatever alimony/maintenance payments the court may award, the law entitles a wife to an equal share of the couple's "matrimonial assets", which include the home and its contents, the car, cottage and other things used for family purposes.

This equal sharing is not certain to take place, however, because it is subject to the discretion of the court, which can change it if it believes that equal shares would be "grossly unjust or unconscionable".

To determine this, the court must use a list of criteria, including the means and needs of each spouse, the length of time they lived together, when and how the property was acquired and the contribution of each spouse to the welfare of the family, including "any contribution made by a spouse in looking after the

matrimonial home or caring for the family". Sexual misconduct is not to be taken into account.

Another important provision concerning the matrimonial home (and its contents) is that even if the court grants its ownership to one spouse, it can still give the exclusive right to live in it to the other. This is only done in exceptional circumstances, however, such as when no other adequate housing is available or when it is in the best interest of the children.

The rest of the spouses' property, which is called "business assets" and includes farm operations, businesses, savings and retirement savings plans, is not generally shared between the spouses on separation or divorce. The exception is when the spouse who does not own them has increased their value through a contribution of work or money, for example if the wife worked in the husband's business or on his farm. In such cases, the court will order that an appropriate compensation or share of the "business assets" be given to the non-owning spouse.

- **On the Husband's Death:** When a husband dies, his widow has the same right to a share of his assets as if they had separated or divorced. Also, she automatically inherits her husband's share of their matrimonial home, which makes her sole owner of it.

If the assets this gives her are insufficient to support her adequately, she can apply to the courts for a larger share of her husband's estate under the province's dependants' relief legislation.

PRINCE EDWARD ISLAND

The standard matrimonial regime of Prince Edward Island, which was established by its Family Law Reform Act of 1979, is a regime of deferred sharing with judicial discretion. This applies to the spouses who did not opt out of it by marriage contract (except for the provisions concerning the matrimonial home during the marriage, which apply to everyone), and it works as follows:

- **During the Marriage:** The general rule is that the spouses are separate as to property, so that a wife has no rights at all over the property and money acquired and owned by her husband.

This rule of separation is carried so far that even if a man buys property in his wife's name or transfers property to her, he is still presumed to be its owner unless a clear proof shows that it was meant to be a gift.

There are three exceptions to this rule:

- 1) the matrimonial home cannot be sold or mortgaged without the consent of both spouses or a court order;
 - 2) both spouses are equally entitled to use the matrimonial home, even if only one of them owns it;
 - 3) the fact that property or money is put in the joint names of the spouses is proof that they are intended to own them in equal shares.
- **Upon Separation or Divorce:** In addition to whatever alimony/maintenance payments the court may award, the law entitles a wife to an equal share of the couple's "family assets", which include the home and its contents, the car, cottage and other things used for family purposes.

This equal sharing is not certain to take place, however, because it is subject to the discretion of the court, which can change it if it believes that equal shares would be "inequitable".

To determine this, the court must use a list of criteria, including the length of time the spouses lived together, whether the property was acquired through gift or inheritance, and "any other circumstance" related to the "acquisition, disposition, preservation, maintenance, improvement or use" of the property. Sexual misconduct is not to be taken into account.

Another important provision concerning the matrimonial home (and its contents) is that even if the court grants its ownership to one spouse, it can still give the exclusive right to live in it to the other. This is only done in exceptional circumstances, however, such as when no other adequate housing is available or when it is in the best interests of the children.

The rest of the spouses' property, including businesses, farms, savings, retirement savings plans and pension rights, is not generally shared between the spouses on separation or divorce. The exceptions to this are:

- 1) if one spouse liquidated his/her "family assets" to avoid sharing them with the other;
- 2) if the spouse who does not own these "non-family assets" has contributed work or money to increase their value, for example through the wife's work in her husband's business or on his farm;
- 3) if the court, using the same criteria as for the splitting of the "family assets", decides it would be inequitable not to share some of these other assets as well.

- **On the Husband's Death:** The sharing of property which occurs on separation or divorce does not apply on death unless the couple was already separated or divorced and an action for splitting the property had been started before the death.

Because of this, it is not impossible for a man to make a will leaving so little to his widow that she will be unable to support herself adequately. Should this happen, her only recourse is to apply to the courts for a (larger) share of her husband's estate under the province's dependants' relief legislation.

NOVA SCOTIA

The standard matrimonial regime of Nova Scotia, which was established by its Matrimonial Property Act of 1980, is a regime of deferred sharing with judicial discretion. This applies to the spouses who did not opt out of it by marriage contract, and it works as follows:

- **During the Marriage:** The general rule is that the spouses are separate as to property, so that a wife has no rights at all over the property and money acquired and owned by her husband.

This rule of separation is carried so far that even if a man buys property in his wife's name or transfers property to her, he is still presumed to be its owner unless a clear proof shows that it was meant to be a gift.

There are three exceptions to this rule:

- 1) the matrimonial home cannot be sold or mortgaged without the consent of both spouses or a court order;
 - 2) both spouses are equally entitled to use the matrimonial home, even if only one of them owns it;
 - 3) the fact that property or money is put in the joint names of the spouses is proof that they are intended to own them in equal shares.
- **Upon Separation or Divorce:** In addition to whatever alimony/maintenance payments the court may award, the law entitles a wife to an equal share of the couple's "matrimonial assets", which include the home as well as everything else the spouses own that is not a business, an investment, a gift, an inheritance, personal effects, awards for damages or property acquired after they separated.

This equal sharing is not certain to take place, however, because it is subject to the discretion of the court, which can order unequal shares, or include excluded properties in the sharing, if it believes it is necessary to avoid an "unfair and unconscionable" result.

To determine this, the court must apply more than a dozen criteria, including the length of time the spouses lived together, the "contribution by one spouse to the education or career potential of the other", the contribution of each to the marriage "as a homemaker or parent", and "the effect of the assumption by one spouse of any housekeeping, child care or other domestic responsibilities ... on the ability of the other to acquire, manage, maintain, operate or improve a business asset". Sexual misconduct is not to be taken into account.

In addition, a spouse who has contributed work or money to increase the value of the other's business assets, for example a wife who worked in her husband's store or on his farm, is entitled to a share of these assets or to some other appropriate compensation.

Another important provision concerning the matrimonial home (and its contents) is that even if the court grants its ownership to one spouse, it can still give the exclusive right to live in it to the other. This is only done in exceptional circumstances, however, such as when no other adequate housing is available or when it is in the best interests of the children.

- **On the Husband's Death:** When a husband dies, the widow has the same right to a share of his assets as if they had separated or divorced.

If the amount this gives her is insufficient to support her adequately, she can apply to the courts to get more money from her husband's estate under the province's dependants' relief legislation.

NEW BRUNSWICK

The standard matrimonial regime of New Brunswick, which was established by its Marital Property Act of 1981, is a regime of deferred sharing with judicial discretion. This applies to the spouses who did not opt out of it by marriage contract and it works as follows:

- **During the Marriage:** The general rule is that the spouses are separate as to property, so that a wife has no rights at all over the property and money acquired and owned by her husband.

This rule of separation is carried so far that even if a man buys property in his wife's name or transfers property to her, he is still presumed to be its owner unless a clear proof shows that it was meant to be a gift.

There are three exceptions to this rule:

- 1) the matrimonial home cannot be sold or mortgaged without the consent of both spouses or a court order;
- 2) both spouses are equally entitled to use the matrimonial home and its contents, even if only one of them owns them;
- 3) if the matrimonial home is sold, each spouse is entitled to half of the net proceeds of the sale; this right is not absolute, though, because either spouse can ask the court to order an unequal division if equal shares would be "inequitable" in the circumstances;
- 4) the fact that property or money is put in the joint names of the spouses is proof that they are intended to own them in equal shares.

- **Upon Separation or Divorce:** In addition to whatever alimony/maintenance payments the court may award, the law entitles a wife to an equal share of the couple's "marital property", which includes the home and its contents, the car, cottage and other things used for family purposes, as well as everything else the spouses acquired during their life together which is not a business, a gift or an inheritance.

This equal sharing is not certain to take place, however, because it is subject to the discretion of the court, which can vary the shares to avoid what it considers an "inequitable" result.

To determine whether the "marital property" should be split equally, the court must weigh the contribution of each spouse to the acquisition or maintenance of these assets, the length of time the spouses lived together and any agreement between them, as well as when the property was acquired and from what source. Sexual misconduct is not listed as a factor to be taken into account in these determinations.

Another important provision concerning the matrimonial home (and its contents) is that even if the court grants its ownership to one spouse, it can still give the exclusive right to live in it to the other. This is only done in exceptional circumstances, however, such as when no other adequate housing is available or when it is in the best interests of the children.

As for the spouses' "non-marital" properties (businesses, gifts, inheritances), which are not generally shareable, the court may nevertheless decide to grant part of them to the non-owning spouse in the following cases:

- 1) if one spouse liquidated his/her "marital property" to avoid sharing it with the other;
- 2) if the court believes it would be "inequitable" not to share them having regard to the same criteria used to split the "marital property", as well as to "the effect of the assumption by one spouse of any of the (child care and household management) responsibilities on the ability of the other spouse to acquire, manage, maintain, operate or improve property that is not marital property";
- 3) if a spouse has contributed work or money to increase the value of the other's business, for example a wife who worked in her husband's store or on his farm.

- **On the Husband's Death:** When a husband dies, the widow has the same right to a share of his assets as if they had separated or divorced.

If the amount this gives her is insufficient to support her adequately, she can apply to the courts to get more money from her husband's estate under the province's dependants' relief legislation.

QUEBEC

The standard matrimonial regime of Quebec, which is called "partnership of acquests", is a regime of deferred sharing. It applies to people married after July 1970 who did not opt out of the standard regime through a marriage contract, and it works as follows:

- **During the Marriage:** The general rule is that the spouses are separate as to property, so that a wife has no rights at all over the property or money acquired and owned by her husband.

There are three exceptions to this rule:

- 1) a spouse cannot give away the property or money he or she has earned during the marriage, except for modest sums and customary presents, without the consent of the other spouse;
 - 2) a matrimonial home against which a "declaration of family residence" has been filed by a spouse cannot be sold, mortgaged or rented without the consent of both spouses or a court order (if the spouses are tenants, a warning to the building's owner will prevent subletting or leasing without the consent of both spouses);
 - 3) a spouse cannot, without the other's consent, move out, sell or otherwise dispose of the contents of the matrimonial home which are used for family purposes.
- **Upon Separation or Divorce:** In addition to whatever alimony/maintenance a court may award to a wife, she has an absolute right to one-half the value of the assets acquired by her husband during the period of the marriage. The usual result is an equal division of all the property and money both spouses earned during the marriage. The only assets acquired during the marriage which are not shared are gifts, inheritances, awards for damages, rights to future pensions and personal items such as clothes or tools used in a trade or profession.

Since April 1981, the courts can grant exclusive use or ownership of the family furniture to either spouse at the time of a separation or divorce, with compensation to the other spouse if necessary.

Similar provisions were also enacted for the matrimonial home - though only its use, not its ownership, could be given to the non-owning spouse in the case of a separation - but these have not yet come into force.

Another provision enacted in April 1981 which has not yet been proclaimed into force would empower the court, at the time of a divorce, to order either spouse to make payments to the other in compensation for her/his contribution in money or work to the increase in value of the other's property. If and when this is implemented, Quebec's standard matrimonial regime will become one of deferred sharing with judicial discretion.

- **On the Husband's Death:** When a husband dies, the widow has the same right to a share of his assets as if they had separated or divorced.

If the amount this gives her is insufficient to support her adequately, she has no legal recourse to obtain a larger share of her husband's estate.

This may be corrected, in some cases, by a provision enacted in April 1981 which has not yet come into force. It provides for a compensatory payment to be granted, after a spouse's death, to a surviving spouse whose contribution in money or work increased the value of the deceased's property.

Other measures proposed by the Quebec Civil Code Revision Office but not yet enacted would:

- 1) guarantee to all spouses, irrespective of their wills or matrimonial regimes, a fixed minimal share of the estate of their deceased husband or wife;
- 2) entitle surviving spouses who are left without sufficient means of support to apply to the courts to obtain a (larger) share of their deceased spouse's estate.

ONTARIO

The standard matrimonial regime of Ontario, which was established by its Family Law Reform Acts of 1975 and 1978, is a regime of deferred sharing with judicial discretion. This applies to the spouses who did not opt out of it by marriage contract (except for the provisions concerning the matrimonial home during the marriage, which apply to everyone), and it works as follows:

- **During the Marriage:** The general rule is that the spouses are separate as to property, so that a wife has no rights at all over the property and money acquired and owned by her husband.

This rule of separation is carried so far that even if a man buys property in his wife's name or transfers property to her, he is still presumed to be its owner unless a clear proof shows that it was meant to be a gift.

There are three exceptions to this rule:

- 1) the matrimonial home cannot be sold or mortgaged without the consent of both spouses or a court order;
 - 2) both spouses are equally entitled to use the matrimonial home, even if only one of them owns it;
 - 3) the fact that property or money is put in the joint names of the spouses is proof that they are intended to own them in equal shares.
- **Upon Separation or Divorce:** In addition to whatever alimony/maintenance payments the court may award, the law entitles a wife to an equal share of the couple's "family assets", which include the home and its contents, the car, cottage and other things used for family purposes.

This equal sharing is not certain to take place, however, because it is subject to the discretion of the court, which can change it if it believes that equal shares would be "inequitable".

To determine this, the court must use a list of criteria, including the length of time the spouses lived together, whether the property was acquired through gift

or inheritance, and "any other circumstance" related to the "acquisition, disposition, preservation, maintenance, improvement or use" of the property. Sexual misconduct is not to be taken into account.

Another important provision concerning the matrimonial home (and its contents) is that even if the court grants its ownership to one spouse, it can still give the exclusive right to live in it to the other. This is only done in exceptional circumstances, however, such as when no other adequate housing is available or when it is in the best interests of the children.

The rest of the spouses' property, including businesses, farm operations, savings, retirement savings plans and pension rights, are not generally shared between the spouses on separation or divorce. The exceptions to this are:

- 1) if one spouse liquidated his/her "family assets" to avoid sharing them with the other;
- 2) if the spouse who does not own these "non-family assets" has contributed work or money to increase their value, for example through the wife's work in her husband's business or on his farm;
- 3) if the "assumption by one spouse of (all the child care and housework) responsibilities" has enhanced the other spouse's ability to acquire, maintain or improve his "non-family" assets;
- 4) if the court, using the same criteria as for the splitting of the "family assets", decides it would be inequitable not to share some of these other assets as well.

- **On the Husband's Death:** The sharing of property which occurs on separation or divorce does not apply on death unless the couple was already separated or divorced and an action for splitting the property had been started before the death.

Because of this, it is not impossible for a man to make a will leaving so little to his widow that she will be unable to support herself adequately. Should this happen, her only recourse is to apply to the courts for a (larger) share of her husband's estate under the province's dependants' relief legislation.

MANITOBA

The standard matrimonial regime of Manitoba, which was established by its Marital Property Act of 1978, is a regime of deferred sharing with judicial discretion. This applies to the spouses who did not opt out of it by marriage contract, and it works as follows:

- **During the Marriage:** The general rule is that the spouses are separate as to property, so that a wife has no rights at all over the property and money acquired and owned by her husband.

However, this rule of separation is subject to many exceptions:

- 1) because of the province's homestead rights, a spouse who owns the matrimonial home and the land on which it stands (in the countryside, this can mean as much as 320 acres of land) cannot sell or mortgage them without the other spouse's written consent;
 - 2) both spouses are equally entitled to use the matrimonial home and its contents, the family car, the cottage and other things used for family purposes, even if only one of them owns them;
 - 3) if a husband buys property in his wife's name or transfers property or money to her, he is presumed to have made her a gift of it; if he later wants to claim any part of this, he has to provide proof - other than his word - that the transaction was not meant to be one of gift (The same does not apply to transfers from wives to husbands. In that case, she is still presumed to be the owner unless a clear proof shows that it was meant to be a gift.);
 - 4) in addition to the usual spousal right to material support (meaning adequate food, shelter and clothing), homemaking wives are entitled to a reasonable cash allowance for personal expenses from their breadwinner husbands;
 - 5) each spouse has a right, which is enforceable by court order, to obtain detailed information about the other spouse's financial affairs (earnings, debts, savings, etc.).
- **Upon Separation or Divorce:** In addition to whatever alimony/maintenance payments the court may award, the law entitles a wife to an equal share of all

the assets of the spouses.

This equal sharing is not certain to take place, however, because it is subject to the discretion of the court, which can vary the spouses' shares on the basis of criteria which vary depending on the category of assets.

In the case of "family assets", which include the home (meaning only the house and yard) and its contents, the car, cottage and other things used for family purposes, as well as rights to pension plans and private insurance policies, the court may only vary the equal shares if it believes the result would otherwise be "grossly unfair or unconscionable" because of "extraordinary circumstances".

For the rest of the property, which is called "commercial assets" and includes farm operations, businesses, savings, etc., the court may vary the equal shares if it finds them to be "clearly inequitable" in the light of specific criteria. These include the nature and origin of the assets, the length of time the spouses lived together, and "the extent to which the financial means and earning capacity of each spouse have been affected by the responsibilities and other circumstances of the marriage". Sexual misconduct is not to be taken into account.

In addition to the above, the court may grant the ownership of the matrimonial home to one spouse while giving the exclusive right to live in it to the other.

- **On the Husband's Death:** The Dower Act, which applies irrespective of the provisions of the spouses' wills, entitles the surviving spouse to one half of the deceased's estate, up to \$250,000 or \$15,000 a year.

The surviving spouse also acquires a "life estate" in the homestead (the home and up to 320 acres of land on a farm), meaning the right to live on it for the rest of her/his life, or to collect the rents arising from it.

Should all this leave the widow insufficiently provided for, she can apply to the courts under the province's dependants' relief legislation to ask for a larger share of her husband's estate.

SASKATCHEWAN

The standard matrimonial regime of Saskatchewan, which is determined by its Matrimonial Property Act of 1980, is a regime of deferred sharing with judicial discretion. This applies to the spouses who did not opt out of it by marriage contract, and it works as follows:

- **During the Marriage:** The general rule is that the spouses are separate as to property, so that a wife has no rights at all over the property and money acquired and owned by her husband.

This rule of separation is carried so far that even if a man buys property in his wife's name or transfers property to her, he is still presumed to be its owner unless a clear proof shows that it was meant to be a gift.

There are four exceptions to this rule:

- 1) because of the province's homestead rights, a husband who owns a matrimonial home and the land on which it stands (in the countryside, this can mean as much as 160 acres of land) cannot sell or mortgage them without the written consent of his wife;
 - 2) both spouses are equally entitled to use the matrimonial home and its contents, even if only one of them owns them;
 - 3) the fact that property or money is put in the joint names of the spouses is proof that they are intended to own them in equal shares;
 - 4) a spouse can apply to the courts, at any time during the course of the marriage, to ask for a division of the matrimonial property; this splitting is done on the basis of the same rules as in the case of separation or divorce (below).
- **Upon Separation or Divorce:** In addition to whatever alimony/maintenance payments the court may award, the law entitles a wife to an equal share of all the assets of the spouses. The only exceptions are assets - other than the matrimonial home - which were acquired before the marriage for use by only

one of the spouses.

This equal sharing is not certain to take place, however, because the court has a discretionary power to vary the spouses' shares or to include the excluded assets in the sharing. In determining this, the court applies criteria which vary depending on the category of assets considered.

In the case of the matrimonial home, the court must maintain the equal shares unless it believes this would give "unfair and inequitable" results because of the needs of the spouse who has custody of the children, or because of other "extraordinary" circumstances. The court may also grant exclusive possession of the home and its contents to one spouse while giving its ownership to the other if it finds it desirable for the children or for other reasons.

With respect to all the other shareable assets, the court may vary the equal shares of the spouses after consideration of twenty criteria, including the length of time the couple lived together, when and how the assets were acquired, improved, maintained, the "direct or indirect contribution ... by one spouse to the career or career potential of the other", the "extent to which ... the means and earning capacity of each ... have been affected by the responsibilities ... of the marriage", etc. Immoral or improper conduct by either spouse may only be taken into account if it was substantially detrimental to their financial situation.

- **On the Husband's Death:** When a husband dies, his widow has the same right to a share of his matrimonial property as if the couple had separated or divorced.

Homestead rights do not give the widow a right to use or draw interest from the home and its land (up to 160 acres on a farm), but her permission is still required to sell or mortgage it. In practice, it often means that she retains possession of the home for her lifetime or renounces her right to prevent disposition in exchange for a financial consideration.

Should all this leave the widow insufficiently provided for, she can apply to the courts under the province's dependants' relief legislation to ask for a larger share of her husband's estate.

ALBERTA

The standard matrimonial regime of Alberta, which was established by its Matrimonial Property Act of 1979, is a regime of deferred sharing with judicial discretion. This applies to the spouses who have not opted out of it by marriage contract and it works as follows:

- **During the Marriage:** The general rule is that the spouses are separate as to property, so that a wife has no rights at all over the property and money acquired and owned by her husband.

This rule of separation is carried so far that even if a man buys property in his wife's name or transfers property to her, he is still presumed to be its owner unless a clear proof shows that it was meant to be a gift.

There are two exceptions to this rule:

- 1) homestead rights, which prevent the owning spouse from selling or mortgaging the matrimonial home and the land on which it stands (in the countryside, this can mean as much as 160 acres of land) without the written consent of the other spouse;
 - 2) the fact that property or money is put in the joint names of the spouses is considered proof that they are intended to own them in equal shares.
- **Upon Separation or Divorce:** In addition to whatever alimony/maintenance payments the court may award, the law entitles a wife to an equal share of the spouses' property which was acquired during the marriage other than through gift, inheritance, award for damages or insurance settlements.

This equal sharing is not certain to take place, however, because it is subject to the discretion of the court, which can vary the spouses' shares if it feels that they would otherwise be "unjust and inequitable".

To determine this, the court must take more than a dozen factors into account, including "the contribution made by each spouse to the welfare of the family,

including a contribution made as a homemaker and parent", the work or money contributed by each to increase the value of their assets, the length of the marriage and "any fact or circumstance that is relevant". It appears that this last factor could include sexual misconduct in some cases.

The court may also grant the ownership of the matrimonial home (and contents) to one spouse while giving its exclusive use to the other in cases where it finds it desirable for the children or for other reasons.

- **On the Husband's Death:** The sharing of property which takes place on separation or divorce cannot occur on death unless the couple was already separated or divorced or a divorce action had been started when one of the spouses died. In that case, the survivor can apply to the courts for sharing within six months of the validation of the deceased's will.

In the more usual case where the surviving wife is not eligible for sharing, her only special property right is to a "life estate" in the homestead and its contents. This means that even if her husband made a will leaving all his property to someone else, she can still live on the homestead (including the matrimonial home and as much as 160 acres of land in the countryside) and use the furniture for the rest of her life, or she can collect the rents arising from them.

Should this leave the widow insufficiently provided for, she can apply to the courts under the province's dependants' relief legislation to ask for a (larger) share of her husband's estate.

BRITISH COLUMBIA

The standard matrimonial regime of British Columbia, which was established by its Family Relations Act of 1979, is a regime of deferred sharing with judicial discretion. This applies to the spouses who do not opt out of it by contract, and it works as follows:

- **During the Marriage:** The general rule is that the spouses are separate as to property, so that a wife has no rights at all over the property and money acquired and owned by her husband.

There are two exceptions to this rule:

- 1) if a husband buys property in his wife's name or transfers property or money to her, he is presumed to have made her a gift of it; if he wants to claim any of this property later, he has to provide proof - other than his word - that the transaction was not meant to be one of gift (The same does not apply to transfers from wives to husbands. In that case, she is still presumed to be the owner unless a clear proof shows that it was meant to be a gift.);
 - 2) the Land (Wife Protection) Act provides that if a wife registers her right over the matrimonial home and the land on which it is situated, they cannot be sold or mortgaged without her consent or a court order.
- **Upon Separation or Divorce:** In addition to whatever alimony/maintenance payments the court may award, the law entitles a wife to an equal share of the "family assets", which include the home and its contents, the cottage and car and other things used for family purposes, as well as rights under pension, home ownership and retirement savings plans. Business assets and other investments are not generally shareable between the spouses unless the one who does not own them has contributed directly (through money or work) or indirectly (through child care and household work) to their acquisition.

This equal sharing of the "family assets" is not certain to take place, however, because it is subject to the discretion of the court, which can decide to vary the equal shares or to include other assets in the sharing if it believes that the result would otherwise be unfair.

To determine this, the court must consider specific factors, such as the length of the marriage, whether the property was acquired through gift or inheritance, the "needs of each spouse to become or remain independent and self-sufficient", and "any other circumstance relating to the acquisition, preservation, maintenance, improvement or use of property or the capacity or liabilities of a spouse". Sexual misconduct is not to be taken into account.

- **On the Husband's Death:** The sharing of property which occurs on separation or divorce does not apply on death.

If a widow is disinherited by her husband to the point where she is unable to support herself adequately, her only recourse is to apply to the courts for a (larger) share of her husband's estate under the province's dependants' relief legislation.

NORTHWEST TERRITORIES

The standard matrimonial regime of the Northwest Territories, which was established by its Matrimonial Property Ordinance of 1974, is a regime of judicial discretion. This applies to the spouses who did not opt out of it through special formal agreements, and it works as follows:

- **During the Marriage:** The general rule is that the spouses are separate as to property, so that a wife has no rights at all over the property and money acquired and owned by her husband.

There are exceptions to this rule:

- 1) if a husband buys property in his wife's name or transfers property or money to her, he is presumed to have made her a gift of it; if he wants to claim any part of this later, he has to provide proof - other than his word - that the transaction was not meant to be one of gift (The same does not apply to transfers from wives to husbands. In that case, she is still presumed to be the owner unless a clear proof shows that it was meant to be a gift.);
- 2) a spouse may apply to the courts, at any time during the course of the marriage, to ask for a division of the matrimonial property; this splitting is done on the basis of the same rules as in the case of separation or divorce (see below).

Although the Matrimonial Property Ordinance of 1974 contains provisions that would prevent a spouse from selling or mortgaging the matrimonial home without the other spouse's consent, these have not yet been proclaimed in force.

- **Upon Separation or Divorce:** In addition to whatever alimony/maintenance payments it may award, the court is fully empowered to redistribute property between the spouses in what it considers to be a "fair and equitable" manner.

Contrary to other Canadian jurisdictions, which have all adopted guidelines concerning the splitting of some assets in equal shares between ex-spouses, the

Northwest Territories give almost full discretion to their judges. The only direction they are given in determining the spouses' respective shares is by a section saying that "the judge shall take into account the respective contributions of the husband and wife whether in the form of money, services, prudent management, caring for the home and family or in any other form whatsoever".

- **On the Husband's Death:** No provision exists for the splitting of matrimonial property at the time of the husband's death. It is therefore possible for a man to make a will leaving so little to his widow that she will be unable to support herself adequately. Should this happen, her only recourse is to apply to the courts for a (larger) share of her husband's estate under the province's dependants' relief legislation.

Some provisions of the Matrimonial Property Ordinance of 1974 would improve this situation by entitling surviving spouses to a "life estate" in the matrimonial home and the land on which it stands (meaning as much as 65 hectares in the countryside), as well as in some of the personal effects of the deceased. Unfortunately, these provisions have not yet been proclaimed in force.

YUKON

The standard matrimonial regime of the Yukon, which was established by its Matrimonial Property Ordinance of 1980, is a regime of deferred sharing with judicial discretion. This applies to the spouses who did not opt out of it by marriage contract (except for the provisions concerning the matrimonial home during the marriage, which apply to everyone), and it works as follows:

- **During the Marriage:** The general rule is that the spouses are separate as to property, so that a wife has no rights at all over the property and money acquired and owned by her husband.

This rule of separation is carried so far that even if a man buys property in his wife's name or transfers property to her, he is still presumed to be its owner unless a clear proof shows that it was meant to be a gift.

There are three exceptions to this rule:

- 1) the matrimonial home cannot be sold or mortgaged without the consent of both spouses or a court order;
- 2) both spouses are equally entitled to use the matrimonial home, even if only one of them owns it;
- 3) the fact that property or money is put in the joint names of the spouses is proof that they are intended to own them in equal shares.

- **Upon Separation or Divorce:** In addition to whatever alimony/maintenance payments the court may award, the law entitles a wife to an equal share of the couple's "family assets", which include the home and its contents, the car, cottage and other things used for family purposes.

This equal sharing is not certain to take place, however, because it is subject to the discretion of the court, which can change it if it believes that equal shares would be "inequitable".

To determine this, the court must use a list of criteria, including the length of time the spouses lived together, whether the property was acquired through gift

or inheritance, and "any other circumstance" related to the "acquisition, disposition, preservation, maintenance, improvement or use" of the property. Sexual misconduct is not to be taken into account.

Another important provision concerning the matrimonial home (and its contents) is that even if the court grants its ownership to one spouse, it can still give the exclusive right to live in it to the other. This is only done in exceptional circumstances, however, such as when no other adequate housing is available or when it is in the best interests of the children.

The rest of the spouses' property, including businesses, farms, savings, retirement savings plans and pension rights, are not generally shared between the spouses on separation or divorce. The exceptions to this are:

- 1) if one spouse liquidated his/her "family assets" to avoid sharing them with the other;
- 2) if the spouse who does not own these "non-family assets" has contributed work or money to increase their value, for example through the wife's work in her husband's business or on his farm;
- 3) if the "assumption by one spouse of (all the child care and housework) responsibilities" has enhanced the other spouse's ability to acquire, maintain or improve his "non-family" assets;
- 4) if the court, using the same criteria as for the splitting of the "family assets", decides it would be inequitable not to share some of these other assets as well.

- **On the Husband's Death:** The sharing of property which occurs on separation or divorce does not apply on death unless the couple was already separated or divorced and an action for splitting the property had been started before the death.

Because of this, it is not impossible for a man to make a will leaving so little to his widow that she will be unable to support herself adequately. Should this happen, her only recourse is to apply to the courts for a (larger) share of her husband's estate under the province's dependants' relief legislation.

